

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

JUDITH A. WAGNER, Chapter
11 Trustee of the bankruptcy estate
of the Vaughan Company, Realtors,

Plaintiff,

v.

Master Case NO. 12-CV-00817-WJ-SMV
(Case No. 12-CV-00413-WJ-SMV)

JULIUS WOLLEN, as Trustee of the Julius M.
& Diane Wollen Revocable Trust, dated
October 20, 1993, JULIUS WOLLEN and DIANE
WOLLEN, husband and wife,

Defendants.

STIPULATED ORDER AUTHORIZING LIMITED DISCOVERY

The matter comes before the Court on stipulation of the parties Judith A. Wagner, the Chapter 11 Trustee (the “**Trustee**”) of The Vaughan Company, Realtors (“**VCR**”) on the one hand, and Julius Wollen, Diane Wollen, and Julius Wollen as Trustee of the Julius M. & Diane Wollen Revocable Trust, dated October 20, 1993 (collectively, the “**Defendants**”) on the other, for an Order Authorizing Limited Discovery. Having considered the record, and the requirements set forth in the Federal Rules of Civil Procedure, and being otherwise fully advised, the Court FINDS:

1. This matter was initiated in Bankruptcy Court by the filing of the Trustee’s complaint in Adv. Pro. No. 11-1188-j, arising out of *In re The Vaughan Company, Realtors*, No. 10-10759-j11.

2. On May 21, 2012, the Defendants filed a *Motion to Withdraw the Reference* (Doc. No. 1 in Case No. 12-CV-00413). Defendants had earlier filed, in Bankruptcy Court, a *Motion to Dismiss* (Doc. No. 5 in Adv. Pro. No. 11-1188-j).

3. On July 27, 2012, Master Case No. 12-CV-00817 was created for the purpose of resolving common issues related to the adversary proceedings arising out of VCR's bankruptcy.

4. On August 6, 2012, the Court issued a notice in Case No. 12-CV-00413 including it in the Master Case and directing parties to file all future pleadings therein (Docket No. 7).

5. On November 29, 2012, the Court issued an Order in Case No. 12-CV-00413 withdrawing the Bankruptcy Court reference in this case (Docket No. 8).

6. Defendants have not filed an answer to the Trustee's complaint, and no Scheduling Conference has been scheduled pursuant to Rule 16, Fed. R. Civ. P. As stated above, a *Motion to Dismiss* is pending.

7. Discovery in this case is premature under Fed. R. Civ. P. 26(d) and Local Rule 26.4(a) absent agreement of the parties or Court order.

8. On April 25, 2013, Defendants served the Trustee with a *Defendant's Deposition upon Written Questions under Rule 31(a)*, seeking to question Defendant Julius Wollen pursuant to Fed. R. Civ. P. 31(a). The Certificate of Service was filed in the main bankruptcy case, No. 10-10759-j11, at Doc. 1325.

9. Defendant Julius Wollen is in ill health, such that the parties are concerned about his availability to testify at trial or deposition at a later time.

10. The parties agree that the deposition upon written questions of Julius Wollen should proceed despite discovery being otherwise premature in this case. The parties further

agree that the Trustee may serve upon Mr. Wollen Requests for Admission, under Fed. R. Civ. P. 36.

IT IS HEREBY ORDERED THAT:

A. The parties are granted leave, under Fed. R. Civ. P. 31(a)(2), to take the Deposition by Written Questions of Julius Wollen.

B. For the purposes of Fed. R. Civ. P. 31(a)(5), the Plaintiff is deemed to have been served with Defendants' questions on the date of entry of this Order.

C. The Trustee may serve upon Julius Wollen Requests for Admission under Fed. R. Civ. P. 36.

D. No further discovery is authorized by this Order.



HONORABLE STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE

Submitted by:

ASKEW & MAZEL, LLC

By: /s/ Mark W. Allen

James A. Askew

Edward A. Mazel

Mark W. Allen

320 Gold Ave. SW, Suite 300A

Albuquerque, NM 87102

505.433.3097

505.4717.1494 (fax)

Attorneys for Plaintiff

BEHLES LAW FIRM, P.C.

By: approved via email on 4/29/13

Jennie Deden Behles
202 Central Ave., SE Ste 100A
Albuquerque, NM 87102
505.242.7004
505.242.7066 (fax)

Attorney for Defendants